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DEPARTMENT OF COMMERCE

International Trade Administration

A-201-820

Fresh Tomatoes from Mexico: Notice of Preliminary Results of Changed Circumstances Review and Intent to Terminate the Suspended Antidumping Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On January 22, 2008, the Department of Commerce (the Department) signed the current suspension agreement on fresh tomatoes with growers/exporters of Mexican tomatoes accounting for substantially all (*i.e.*, not less than 85 percent) of Mexico's tomato exports to the United States. The agreement covers all fresh or chilled tomatoes of Mexican origin, except tomatoes that are for processing. On June 22, 2012, the U.S. petitioners in the suspended antidumping duty investigation filed a request for withdrawal of the petition and termination of the investigation and the suspension agreement. On August 21, 2012, the Department published a notice of initiation of changed circumstances review to examine the petitioners' request to terminate the suspended investigation. See Fresh Tomatoes from Mexico: Notice of Initiation of Changed Circumstances Review, 77 FR 50554 (August 21, 2012) and Correction: Fresh Tomatoes From Mexico: Notice of Initiation of Changed Circumstances Review and Consideration of Termination of Suspended Investigation, 77 FR 50556 (August 21, 2012) (collectively, Initiation Notice). In the Initiation Notice we invited interested parties to submit comments for the Department's consideration by September 4, 2012. We have considered the comments received by September 4, 2012, and, for the reasons stated in this notice and in the accompanying decision memorandum, the Department is notifying the public of our preliminary

intent to terminate the suspended investigation. If the suspended investigation is terminated in the final results of this review, the suspension agreement will also terminate, effective on the date of publication of the notice of final results of the changed circumstances review in the Federal Register. Interested parties are invited to comment on these preliminary results.

DATES: Effective (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman, Julie Santoboni, or Anne D’Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-0192, (202) 482-3063, or (202) 482-4830, respectively.

SUPPLEMENTAL INFORMATION:

Background

On August 21, 2012, the Department published a notice of initiation of changed circumstances review to examine the petitioners’ request to terminate the suspended investigation. See Initiation Notice. In the Initiation Notice we invited interested parties to submit comments for the Department’s consideration by September 4, 2012. Interested parties were requested to address the issue of industry support in their comments.

On September 4, 2012, we received comments from the Florida Tomato Exchange (FTE) and the Florida Tomato Growers Exchange (FTGE), Village Farms, Windset Farms and Houwelings Nurseries Oxnard Inc. (collectively, “domestic producers”); CAADES Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociacion Mexicana de Horticultura Protegida, A.C., Union Agrícola Regional de Sonora Productores de Hortalizas Frutas y Legtunbres, and Confederacion Nacional de Productores de Hortalizas, (collectively, “Mexican tomato growers/exporters”); San Vincente Camalu S.P.R. de R.I.; NatureSweet Ltd.; McEntire

Produce; the Fresh Produce Association of the Americas; Wal-Mart; Grant County Foods, LLC; the Government of Mexico; and the Texas International Produce Association. For additional background information, please see “Decision Memorandum: Preliminary Results of Changed Circumstances Review and Intent to Terminate the Suspended Investigation” (Preliminary Decision Memorandum) from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results and hereby adopted by this notice.

Scope of the Suspended Investigation

The merchandise subject to the suspended investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. The merchandise subject to the suspended investigation is currently classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the suspended investigation, available at Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico, 73 FR 4832 (January 28, 2008), is dispositive.

Preliminary Results of Changed Circumstances Review and Intent to Terminate the Suspended Investigation

When examining the domestic industry’s interest in an order or suspended investigation, both the Tariff Act of 1930, as amended (the Act), and the Department’s regulations require that “substantially all” domestic producers express a lack of interest in the order or suspension agreement for revocation of an order or termination of a suspended investigation. See 782(h) of the Act and 19 CFR 222(g). The Department has interpreted “substantially all” to represent

producers accounting for at least 85 percent of U.S. production of the domestic like product.

Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part, 73 FR 60241, 60242 (October 10, 2008), unchanged in Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review, 74 FR 4733 (January 27, 2009).

On September 4, 2012, the domestic producers expressing a lack of interest in continuing the suspended investigation provided information regarding the percentage of domestic production that they represent. The domestic producers submitted signed declarations from 80 U.S. tomato producers accounting for slightly over 90 percent of U.S. production in 2011, based on information from the U.S. Department of Agriculture's Economic Research Service "Vegetables and Pulses Yearbook Data" (Yearbook). In their September 4, 2012, comments, the Mexican tomato growers/exporters argued that the USDA data historically used by the petitioners does not capture total U.S. fresh tomato production. We have considered the arguments raised by interested parties and find that the USDA Yearbook is an objective and reliable source for 2011 U.S. tomato production for purposes of determining industry support in these preliminary results. While we recognize that there are limitations with the USDA data, as discussed in the Preliminary Decision Memorandum, we do not find that these limitations are sufficiently significant as to preclude us from using it to calculate industry support in this instance.

We have considered the information provided by the domestic producers and the September 4, 2012, comments of interested parties and find that, for purposes of these preliminary results, the domestic producers expressing a lack of interest in the suspended investigation account for substantially all, i.e., not less than 85 percent, of the production of fresh

tomatoes in the United States, based on the best publicly available production data. For a detailed discussion of this issue and the comments received from interested parties, see the Preliminary Decision Memorandum.

In light of the above, the Department is preliminarily notifying the public of its intent to terminate the suspended investigation on fresh tomatoes from Mexico.

The Department will consider new factual information from interested parties submitted on the record within 15 days of publication of this notice in the Federal Register. The Department will consider factual information from interested parties to rebut, clarify, or correct information placed on the record that is submitted not later than five days after the time limit for filing new factual information. For each piece of factual information submitted, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding that the factual information is rebutting, clarifying, or correcting.

Public Comment

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the Federal Register.¹ Interested parties may file rebuttal briefs, limited to issues raised in the case briefs.² The Department will consider rebuttal briefs filed not later than ten days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department

¹ See 19 CFR 351.309(c)(1)(ii).

² See 19 CFR 351.309(d).

of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document requesting a hearing must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.³ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, as soon as is practicable, but not later than 270 days after the date on which this review was initiated. See 19 CFR 351.216(e).

If the suspended investigation is terminated in the final results of this review, the suspension agreement will also terminate, effective on the date of publication of the notice of final results of the changed circumstances review in the Federal Register.

These preliminary results of review and notice are in accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221(c)(3), and 351.222.

Paul Piquado
Assistant Secretary for
Import Administration

³ See 19 CFR 351.310(c).

September 27, 2012

Date

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